

A
LETTER
TO A
MEMBER
OF
PARLIAMENT.
WITH
TWO DISCOURSES
Enclosed in it.

- I. The One shewing the *Reason* why a
Law should pass to punish *Adultery*
with *Death*.
- II. The Other shewing the *Reasons* why
the *Writ, De Hæretico Comburendo*,
should be abolish'd.

*Non partis studijs agimur, sed summus arma
Consilij inimica tuis, ignavia fallax.*

Printed Anno 1675,

The Publisher's Advertisement:

These *Papers* are made publick, not in Pre-
sumption to inform the *Parliament*; but
only to give them an *Occasion*, to think of
the *Subjects* they treat of, it being wholly
unimaginable but that the *United Wisdom*
of the *NATION* will find out better
and other *Reasons* for the Establishment
of the Things they propose.

My Dear Friend.

When I review alone the grand Entertainments of Learning, I used to meet with in your Conversation, the Wit of the Poets, the Reason of the Philosophers, your Excellent Observations upon the Actions of Persons illustrious in Arms, who have lived in the several Ages of the World, my Affliction is almost unimaginable to be separated from you: When you went up to the Parliament, there is nothing could have stay'd me (who can scarce be happy a Moment of my Life without you) behind you in the Country, but my Infirmary of Health, and a certain Desire of enjoying the Comfort and Pleasures of the Spring. You know, when we parted, how I conjur'd you alwayes to bear in Mind that grand Rule, Inter pericula libertatis aut veritatis silent amicitia et inimicitia, and then the Light of your own Mind will dispel and overcome the Darkness of others without Noise or Tumult: This World is govern'd by particular Hatreds and Friendships, not by the Reasons of Things; and there is nothing can keep you constant in your Integrity, but the having a perpetual Eye to that Rule. I also then told you, you should look abroad as well as at home, keeping your Eye on Forreign Affairs; for although Hannibal be not yet ad portas, Philip is at Olynthus. I have herein enclosed the Papers I promised you, in which I claim no Property against your absolute Power over them, do what you will with them: You know, the one contains a Discourse shewing the Reasons why Adultery should be Punished with Death; the other, *Abby the Writ, De Hæretico comburendo*, should be Abolished. Adultery, it is the greatest of all Thefts, a Theft of which no Restitution can be made,

Nulla reparabilis arte,

Læsa pudicitia est, deperit illa semel.

Marriage of late hath been looked on as an Engin, a Toil to each Mankind in; the Magistrate had need encourage it to prevent Depopulations: and to be alwayes secure and certain of our Wives, is in my Judgment the best of Encouragements. As to the Abolishing the Writ, *de Hæretico comburendo*, you know I ever have had a Pitty & Charity for Mankind, acknowledging in all a Communion of Minds and Mortality, and particularly for those that dissent from me in Religion, *Omnis animus veritate invitatur privatur*: No Beauty is so pleasant, so agreeable to the Eye as Truth is to the Soul; and all would love it, if they could discover it: As there is but one certain Existence of Things, so there is but one determinate Truth of them, the same to all Understandings, Gods and Man's both. If after all my Search and Labour in Knowledge, I cannot discover a Beam of Truth to guide and lead me into an Unity of Mind with God, am I to be made a Criminall, and dealt with as a Malefactor? He is Infinite, and knows all Things; but my poor Understanding knows one Thing, and doubts of a Thousand: We are here in the Body

(C.)

trist et obscuro Domicilio; and the inspired Apostle himself saith, we see darkly, and but through a Glass. God hath unfolded himself in as great Variety in the Minds of Men, as he hath done in the Material World; The Seed of Religion springs up variously in Human Souls, as we see the seminal Forms do out of the Earth, and would it not be Madness or Folly to destroy & cut up all Trees and Plants but the Oak? I am not without all Jealousie, that it is possible, we in England may return back again to the Church of Rome, not only because I see in History Monarchies more subject to Changes than Common-Wealths in Matters of Religion, and observe how indisfatigable that Infalible Church (in its own Judgment) is to revenge our Schism from it upon us, and so may weary us out at last, & how unsafe they apprehend themselves at Rome, while the Power of the Sea is in the Hands of Hereticks; but chiefly from the wild Philosophy and Atheism of the present Age, Atheism being a Preparation to receive any Colour or Tincture in Religion. I would have the Law of Burning of Hereticks repeal'd, lest we should see that Day. It is a Law Sanguinary with a Witness, written like Draco's in Characters of Blood, as barbarous as that of Ordeal, or Tryal by Battail, built upon no Reason, but upon a Self-Opinion every Sect hath, that it hath a Monopoly of God to it self, and upon no Scripture I know of, but the Monkish Gloss, *Hæreticos de vita*.

My Dear Friend, Although Gentlemen of fine Parts are sooner debauch'd in popular Assemblies under a Monarchy, then Men of plainer Wisdom; as Native Beauty is less subject to be tempted by others, than Beauty accompanied with the Ornaments of Art: I doubt not at all your Integrity in this Parliament, you are not a Man of fluttering Principles betwixt Knavery and Honesty, you will herd in your Vote with no Cabal, but go with the Squadron volante, & Reason upon every Debate appears to you; I know you account a Liberty of Judgment in an uninterested Indifference of Mind without Fears or Hopes, a Grandeur and Excellence above the Rewards of Wealth from the Court, or of Fame from the People; nor am I afraid that amidst the Pleasure or Business of the City, you will depart from the Contemplative Life, but be alone with your own Mind, and drink of the Spring of Truth there, which overflowed so constantly your Conversations with me in the Country;

Non Venus, aut vinum sublimia pectora fregit,

Officiumve fori — — —

And as for our Friendship, which has been a Communion of Minds & Fortunes for several Years, I have no Cloud nor Umbrage of Jealousie towards you. Friends in this World are not like Satyrs or Centaurs without real Existence, as Cardan under a Melancholy complains they are; I am sure I have found one which (as he says) he never was so happy in his Life so do. I will detain you no longer from the Care of the publick Affairs. I am Dearest Sir,

April 17. 1675.

Your most sincerely affectionate Friend,

A

A Short Discourse why a Law should pass in England to punish Adultery with Death.

*Publicus assertor, vitiis suppressa levabo
Pectora, vindicta quisq; favete suæ. Ovid.*

IT will be necessary before I give my *Reasons* why such a *Law* should pass, that I do explain what *Adultery* is, the Notion of it being ordinarily mistaken.

Adultery is the lying of a *Single* or *Married Man* with another *Man's Wife*, and not the lying of a *Married Man* with a *Single Woman*. Thus it was constantly apprehended among the *Jews*, to whom God gave the Law, *Thou shalt not commit Adultery*: And *David's Sin* was the taking the poor *Man's Ewe Lamb* from him, which lay in his Bosom, when he had Flocks enough of his own. I presume, there is none doubts the *Christian Magistrates Power* to make such a *Law*; Death is already amongst us the Penalty for less Crimes: We punish boldly with Death a *Horse-stealer* or a *Cut-purse* without any *Scruple* at all; and is not my *Property* in my *Wife* of dearer & nearer Concern to me, then my *Horse*, or a little *Pocket-money*?

The *primary Law* of *Nature* is the Observance of our *Contracts*; for indeed, without this there could be no *Government*: the State of *Nature* would still have continued; this Crime intrenches highly on this Law, dissolving the *Family-Government*; it is a Breach of the Solemnest Contract (entered into *pro bono publico*, *Marriage* being *sacramentum Reipubl.*) imaginable: That is the Nature of the Crime, but the *Magistrate* is chiefly to concern himself in the Consequences of it; and they are more mischievous where the *Woman* breaks the Contract on her Part; for thereby a *Spurious Issue* that robs the *Husband* by wholesale of his Estate, of all his own and his *Ancestors Acquisitions*, is brought into his Family. The Crime is then a Complication of all the *wickedness* in *Lust*, *Breach of Faith* and *Robbery*; And therefore I may justly infer that seeing Men equally concur with Women to transact it, they are justly equally punishable.

If a Man shall violate the *Companion* of the *King*, or the *Companion* of the *Eldesi Son* and *Heir* of the *King*, it is high *Treason*: by this we see the Care of the Law, no *Spurious Issue* should inherit the *Crown*; should we not take some proportionable Care of our own Estates?

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We may do well to reflect upon the Example of other Nations, as of the *Jews* (for many Ages the only known People of God) amongst whom *Adultery* was punished with *Death*, upon the Example of the *Gentes moratores* among the *Heathens*; of the *Athenians*, who upon *Solon's* Law punished this Crime *Capitally*; of the *Romans*, who in Imitation of *Solon's* Law, set down for their Law in the 12 Tables, *Machum in adulterio deprehensum negato*. Afterwards in the *Roman* State it was lawful for the Husband, until the *Lex Julia* in *Augustus* his Time, *Uxores in adulterio deprehensas sine judicio impune necare*.

We may also consider what the *Christian Church* has done for the Suppression of this Sin: In the first and best Times of *Christianity* they did all they could (having not *jus vita ac necis*) against it. The *Penance* then for it was perpetual to the Hour of *Death*. *Zephyrynus* Bishop of *Rome*, anno 216. moderated the *Penance*, but the *African Churches*, and particularly the grand *Tertullian* opposed it as an Innovation.

The *Ancyran Council*, anno 315. ordains 7 Years *Penance* for it. And the Council of *Eliberis* ordains, that he that commits *Adultery* again after *Penance* for the First Fault, should not be taken into Communion at the Hour of *Death*.

In after Ages, when the *Roman Church* was resolved upon a *Corlibacy* in her *Clergy*, it was necessary the Sin should be looked on with a gentle Eye, & now it is dwindled down into a *Peccadillo*, but is in Truth like the *Peccadillo* of not believing in God at all; for if ever he gave a Law to Man, it is one to prohibit *Adultery*. Several of the Reformed Countries, who have recover'd themselves from under the Empire of Wit and Fraud over their *Consciences* by that Church, punish the Crime at this Day with *Death*.

As for us in *England*, our present Law is not without the Infusions of the *Roman Church* upon it in this Case; all the Remedy the injur'd Husband hath by our Law, is, to sue a *Divorce* in the *Spiritual Court*, and be cozen'd with a Sentence of Separation *a Mensa & Thoro*, a Crafty Invention against the plain Gospel.

If the Husband kill the *Adulterer*, or his Wife found by him in *ipso actu*, the Law excuseth him in this Case from *Murder*, but condemns him of *Man-Slaughter*, and hangs him if he cannot read; what a poor Remedy hath the Injur'd Man? If he kill the *Adulterer* deliberately, not provoked by Ocular Demonstration, it is *Murder*. Besides all this, the present Law being so defective, the Crime grows upon it; 'tis common, and this Age gives it the soft and gentle *French* Names of *Gallantry* and *Divertisement*, in Apology for it: What ought the *Magistrate* to do in this Case, but to pursue this Crime as far as his Hand can reach, to the Grave it self, and then *Expectet Deum Ultorem*?

A short Discourse shewing the Reasons why the Writ,
De Heretico comburendo should be abolished.

*Chrysippus non dicit idem nec mihi Thalesis
Ingenium dulciq; senex vicinus Hymeto.* Juvenal.

Para errantis est doceri. Plato cited by Grotius.

BEfore I give my *Reasons*, it will be necessary to shew the State of the Law at present upon this *Writ*: Before the Statute, 2 H. 4. cap. 15. No Person could be convicted of *Heresie*, but by the Arch-Bishop and all the Clergy of the Province, but by that Statute any particular Bishop might in his Diocels convict of *Heresie*, and issue forth his Precept to the Sheriff to burn the Person he had convicted; a Law whereby the Clergy gain'd a Dominion over the Lives of the Subjects independent upon the Crown: It was repealed by the Stat. 25. H. 8. cap. 14. but so as particular Bishops may still convict; but without the Kings *Writ*, De Heretico comburendo, first obtained, no Person convicted can be put to Death; and so the Law stands at this Day.

My REASONS are these.

I. The Continuance of this *Writ* in force amongst us, is a standing Reproach to the Christian Religion we profess (a Religion of Love and Peace) If it be not to be propagated in the whole by Force and Bloodshed, certainly a Part of it as a particular Point of Faith in it, is not. In the Gospel of Christ all the Punishment of *Heresie* and of Infidelity it self, are adjourned over, and left to the other World.

II. If an Act pass to abolish this *Writ*, it will be an Act of Indulgence in part, and give an Assurance to all Persons of a different Judgment from the present established Church, that they are secure as to their Lives under the Government.

III. If Popery should ever return back into England, there must a Parliament sit to repeal such an Act, before any Protestant for his Opinion could be put to Death.

IV. Such an Act would leave the Power of the present Church to convict, excommunicate and imprison Untouched, only would take away their barbarous Execution of her Sentence.

If it be objected, *the Writ is grown Obsolete and disused and so need not be taken away*: The Answer is obvious; *Not so obsolete neither*: It was used in King James's Time; However, it's fit it should not remain as a Snare among our Law; for the Case concerns *Life or Death*: and the *Papists* use the *Writ* constantly against the *Protestants*; but they never against them.

FINIS.

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